

Applicants provisionally elect with traverse the electrolyte filament materials for the plurality of nanowires. Claims 1, 48 and 49 are generic. Claims 2, 3, 4, 6-20 and 68-71 are readable thereon.

Applicants provisionally elect with traverse the cathode as the patterned film. Claims 1, 48 and 49 are generic. Claims 2, 3, 4, 6-8, 10-20 and 68-71 are readable thereon.

Further, Applicant assumes for purposes of this response that in this **second** Restriction Requirement, the Examiner has made a complete requirement for restriction in accordance with MPEP §§ 815 and 817. If the Examiner has not made a complete requirement, then Applicant respectfully requests that the Examiner withdraw this restriction requirement and provide a complete restriction requirement so that Applicant can properly assess the Examiner's assertions.

Traversal of subject Restriction Requirement

The Examiner states that Applicants must decide between the species of 1) the plurality of nanowires enhancing **catalytic activity** of the patterned film, or 2) the plurality of nanowires enhancing **conductivity** of the patterned film. The Examiner also states that Applicants must select a species for the **substrate**, a species for the **plurality of nanowires**, and a species for the **patterned film**. The Examiner asserts that the species for each recitation provided above are distinct, however, the Examiner provides **no** support or evidence for her assertion that would lead one to conclude that the species for each recitation are, in fact, distinct. Without such evidence, it is submitted that the Examiner has **not** made a *prima facie* case for the species restrictions.

Further, the recitation in claims 1, 48 and 49 subject to the species restriction for the substrate, the plurality of nanowires, and that the plurality of nanowires enhances catalytic activity and conductivity could have been, but was not, addressed in the first Restriction Requirement (i.e., the Restriction Requirement dated March 17, 2006).

Under MPEP §§ 815 and 817, Examiners are directed to make a **complete** requirement for restriction.

Since then, these claims have been extensively prosecuted for almost two years, yet the currently pending claims still recite, **a substrate, a plurality of nanowires**, and that the plurality of nanowires **enhances catalytic activity and conductivity**. After such extensive prosecution of these claims, Applicants question why these claims are suddenly subject to a species restriction.

Additionally, MPEP §803 provides that "[i]f the search and examination of all the claims in an application can be made **without serious burden**, the examiner **must** examine them on the merits, even though they include claims to independent or **distinct inventions**." (Emphasis added). Applicants submit that if the Examiner believed that the recitation of both enhancing catalytic activity and enhancing conductivity in the claims would cause a serious burden during examination thereof, the Examiner would have subjected the claims to restriction in the prior Restriction Requirement (i.e., the Restriction Requirement dated March 17, 2006). However, the Examiner did not do so. Instead, the Examiner proceeded to examine the elected claims. This is similarly true with the recitations of the substrate and the plurality of nanowires in claim 1.

The recitation of the patterned film was introduced in Applicants' Amendment dated June 29, 2006. However, the Examiner continued to examine claim 1 in light of the amendment without a species restriction. If the Examiner found it burdensome to search the claimed recitation of a patterned film, the Examiner would have submitted a second Restriction Requirement at that time. However, the Examiner did not do so.

As such, the Examiner clearly did not find it overly burdensome to examine claims 1, 48 and 49 since the Examiner **has already searched and examined the claims on several occasions** (as set forth above). Accordingly, it is submitted that the

Examiner also has not made a *prima facie* case of showing a serious burden to further examine the claims without the species restriction.

Applicants therefore respectfully request withdrawal of the second Restriction Requirement dated December 28, 2007, and further request allowance of the pending claims.

Further and favorable consideration is requested.

Respectfully submitted,

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